

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
F.C.A. NO. 24 OF 2007
IN
M.LJ.PETITION NO. A/860/2004
ALONGWITH
CIVIL APPLICALTION NO. 141 OF 2007

KULWANT SINGH SANHOTRA ... APPELLANT.

VS.

GURJEET KAUR SANHOTRA & ANR. ... RESPONDENTS.

SACHIN MASURKAR FOR THE APPELLANT.

MR. A.P.SINGH FOR THE RESPONDENTS.

CORAM : J.N.PATEL & A. A. SAYED, JJ.

DATE : June 18, 2007.

P.C.

1. Heard the learned Counsel for the parties.

2. The appeal can be disposed of at the stage of
admission itself.

3. The appellant is the husband and the respondent

is the wife before the family Court in a petition, filed by the wife seeking divorce, under Section 13(1)(ia) of Hindu Marriage Act, alongwith an interim application for maintenance. The Family Court granted interim maintenance to the wife @ 1650/- (Sixteen hundred fifty only) per month from 23rd September 2004. It was brought to the notice of the Family Court in an application at Exhibit 17 filed in the Petition before the Family Court that the husband, who is the appellant before this Court has failed to comply with the interim Order of maintenance and has been a habitual defaulter. The respondent-husband took a stand that because of loss in business and he having suffered an accident, he could not comply with the Orders of the Court. At the first instance, the Family Court directed him to be detained in civil prison for one month, which he had undergone. Even thereafter the husband did not bother to comply with the Order and, therefore, the Family Court was left with no alternative but to pass the impugned Order, directing the appellant-husband to clear up all the arrears of maintenance within a period of one month, failing which, his defence was ordered to be struck off.

4. When the matter was taken up by this Court for

admission, the learned Counsel for the appellant-husband states that he has deposited all the arrears of maintenance and would continue to deposit the interim maintenance as directed by the Family Court.

5. The learned Counsel appearing for the Respondent-wife submitted that though the appellant - husband has deposited the arrears of maintenance, he has failed to comply with the Order of the Family Court, in letter and spirit that an amount of Rs. 90,000/- (Rupees ninty thousand only) is still outstanding for being paid to the MHADA in respect of the accommodation, where the wife is residing. It is submitted that in case, the appellant deposits a sum of Rs. 90,000/- with MHADA being the charges for maintenance, taxes etc. and gives an undertaking to that effect to this Court, the Respondent-wife has no objection for proceeding with the Petition in the Family Court. It is further contended that he should also continue to pay interim maintenance granted by the Family Court, regularly without any fault.

6. On this statement being made by the learned Counsel for the Respondent-wife, the learned Counsel for the appellant has tendered an undertaking that he would deposit a sum of Rs. 90,000/- with MHADA within

90 days from today. The undertaking tendered by the appellant- husband is accepted. It is taken on record and marked 'X' for identification.

7. In our view, in order to give a fair opportunity to the appellant- husband and the appellant- husband having paid all arrears of maintenance towards the interim maintenance and filed an undertaking to this Court to deposit the dues of MHADA within 90 days from the date of this Court, he deserves to be given a fair opportunity to defend the petition before the Family Court.

8. We make it clear that this Court is showing indulgence in the matter in order to give a fair opportunity to the appellant, though he does not deserve for such a relief, considering his previous conduct and, therefore, we quash and set aside the impugned Order and permit the appellant to participate in the proceedings by tendering his written statement on record.

9. This leave is granted subject to condition that henceforth, the appellant- husband would continue to pay interim maintenance regularly during the trial of the Petition before the Family Court, including the

maintenance charges of the flat and charges of the society in respect of the flat, where the Respondent-wife is residing. We make it clear that in the event of any two consecutive defaults in payment of interim maintenance charges or charge of society or of MHADA, the defence of the appellant-husband would stand struck off without inviting any further Order from the Family Court. The Appeal stands disposed of accordingly, with no order as to costs.

10. Parties to appear before the Family Court on 22nd June, 2007, which is the next date fixed in the Petition for recording evidence of the parties.

11. In view of disposal of the Appeal, Civil Application No. 141 and 142 of 2007 do not survive and disposed of accordingly.

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[A. A.Sayed, J]

[J.N.Patel, J.]